

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound E-Format Letter Post

Docket No. CP2020-120

**MOTION OF THE ASSOCIATION FOR POSTAL COMMERCE
TO UNSEAL NONPUBLIC MATERIALS**
(May 14, 2020)

Pursuant to 39 C.F.R. § 3007.400(b), the Association for Postal Commerce (“PostCom”) moves to unseal Attachment 4 to the Postal Service’s Notice of Specific Rates Not of General Applicability for Inbound E-Format Letter Post for 2021 (“Notice”) filed on April 10, 2020. The Postal Service publicly filed a redacted version of this attachment with the Notice. The Commission granted PostCom’s motion for access to the nonpublic version of this attachment on April 30, 2020. *See* Order No. 5496 at 14. Having reviewed the unredacted version of Attachment 4, PostCom can identify no reasonable justification for its nonpublic status and now moves that it be unsealed. Pursuant to Rule 3007.400(b), PostCom states that it has not provided actual notice of this motion to the Postal Service representative identified in the Postal Service’s application for nonpublic treatment pursuant to Rule 3007.201(b)(2).

Attachment 4 to the Notice is Governors’ Decision No. 19-1. It sets forth the Governors’ approval of the price changes contained within the Notice and the rationale for those changes, and it explains why the changes are consistent with law. The Postal Service redacted parts of three sentences on page 2 of the decision. It did not, however, expressly explain why these redactions are necessary in the Application for Nonpublic Treatment accompanying the Notice. That application focuses on the prices themselves

and the financial workpapers underlying those prices, and it describes harms the Postal Service would allegedly suffer if information regarding those topics were released. The Postal Service claims that the redactions it has applied to the materials it filed with the Notice “protect commercially sensitive information . . . such as rates, volumes, weights, underlying costs and assumptions, pricing formulas, and cost coverage projections.” Notice, Attachment 1 at 4. This description does not accurately represent the redacted information in the Governors’ Decision.

Instead, the first two redacted sentences on page 2 of Attachment 4 relate to internal Postal Service processes. The nonpublic material does not state any prices, does not refer to volumes or weights, and does not have any information regarding underlying costs and assumptions, pricing formulas, or cost coverage projections. The redacted material does not even describe any specific criteria for Postal Service actions, any approach to assessing profitability or cost coverage, or any business rationales for Postal Service actions. The redacted material is not “information of a commercial nature . . . which under good business practice would not be publicly disclosed,” and it should not have been redacted in the first place. 39 U.S.C. § 410(c)(2). Certainly, the Postal Service has made no showing that publicly revealing this information would cause it commercial harm as it did not even address these redactions in its application for nonpublic treatment. Thus, in applying the balancing test of 39 U.S.C. § 504(g)(3)(A), almost any public interest in the disclosure of this information would outweigh the nature and extent of likely commercial injury to the Postal Service for disclosure, as that harm is nonexistent.

The general nature of the second redaction is evident on the face of the redacted document. This sentence refers generally to the degree that agreements established

pursuant to the decision will “cover . . . costs.” Notice, Attachment 4 at 2. But the redacted information does not state specific levels of cost coverage that would enable a competitor to infer information about the Postal Service’s cost structure or provide a customer with information that it could use to bargain a better price.

The statutory and regulatory provisions cited in the redacted sentence of Attachment 4, 39 U.S.C. § 3633 and 39 C.F.R. §§ 3015.5 and 3015.7, require each competitive product to cover its attributable costs. Notice, Attachment 4 at 2. It is public knowledge that prior to the establishment of self-declared rates, the prices for Inbound E-Format Letter Post did not cover their attributable costs. In Order No. 5372 in Docket Nos. MC2019-17 and CP2019-155, the Commission publicly recognized that the self-declared rates that would take effect on July 1, 2020 should generate sufficient revenue to allow the product to recover its attributable costs. Order No. 5372 at 15. Indeed, when evaluating competitive rates not of general applicability, it is common for the Commission and other commenters to publicly address whether the rates cover their attributable costs and comply with 39 U.S.C. § 3633. *See, e.g.*, Docket No. CP2020-131, Comments of the Public Representative on Postal Service Request to Add Priority Mail Contract 611 to the Competitive Product List at 2 (“It appears that Contract 611 should in the first year generate sufficient revenues to cover costs and thereby satisfy 39 U.S.C. § 3633(a)”); Order No. 5505 (noting that Contract 611 should cover its attributable costs).

The Postal Service has not alleged any harm resulting from prior public statements regarding whether Inbound E-Format Letter Post products (or other competitive prices) do or do not cover their costs as required by PAEA and the Commission’s regulations. Because PAEA quite publicly states that rates for competitive

products must cover their attributable costs, the Postal Service's customers and competitors are aware of the minimum level of cost coverage required. But that information is useless from a competitive standpoint without additional knowledge of what the specific costs are. Furthermore, the question of whether the rates proposed in this docket meet statutory standards is undoubtedly of public interest. Statements in Governors' decisions going directly to that issue are not entitled to protection if they do not reveal specific cost coverage levels.

As the Commission recognized in Order No. 5503, three of the Postal Service's six justifications for nonpublic treatment of materials filed with its Notice relate only to financial workpapers, and the other three address harms that would allegedly result from disclosure of the rates themselves. Order No. 5503 at 6. None of these cited harms refer to the information contained in the Governors' Decision. There is, on the other hand, a strong public interest in understanding the full basis for the Governors' Decision approving the rates. The rates for Inbound Letter Post, the UPU's impact on those rates, and the ability of these rates to cover their attributable costs (and thus comply with 39 U.S.C. § 3633) are matters of significant public interest. Accordingly, the public interest in this information outweighs any commercial harm that would result from its disclosure. The Commission should therefore direct the Postal Service to publicly file an unredacted copy of Governor's Decision 19-1 in this docket.

Respectfully submitted,

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